

REMARKS

Applicant thanks the Examiner for allowing claim 15 and indicating that claims 2-4, 8-14 and 18-20 are directed to patentable subject matter. Applicant has amended claim 1 to add the central drain disclosed at page 3, line 23, to page 4, line 6, for example. Applicant has combined the limitations of claims 16 and 17, thus overcoming the rejections of claim 16 as anticipated by Høie and Koenig. Applicant has also rewritten allowable claims 18 and 19 in independent form to secure their allowance separately from the amendments made to claim 16. Finally, applicant has amended claim 15 to overcome an informality that does not affect claim scope.

Claims 1, 5, 7 and 16 stand rejected as anticipated by Høie. The amendment to claim 1 overcomes this rejection as to claims 1, 5 and 7 since Høie does not disclose or suggest such a central drain, which would be superfluous to the spigots in Høie's mixing apparatus. This rejection is moot as to amended claim 16.

Claims 6 and 17 stand rejected under 35 USC 103(a) on Høie. The Examiner's statement of this rejection reads as follows:

5. Claims 6 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoie.

6. With respect to claim 6, a lid for vessel 1 is not disclosed in the reference. However, one of ordinary skill in the art would recognize that a lid therefor could be provided as a means to prevent spilling of the contents resulting from the turbulence created by the vortex.

7. The method steps recited in claim 17 are not specifically described by Hoie. However, at col. 2, lines 50-59, patentee describes operation of the system after vessel 1 has been filled to the desired level, wherein spigots B, C are "regulated to maintain the desired water level in the tank during the subsequent mixing and spraying of the admixed components". Therefore, when spigots A, B, C, D are initially opened for continuous flow, the water level is increasing to the desired level and the rate of introduction of the water exceeds the rate of draining. Thereafter, spigot B may be regulated as suggested to change the water level, or reduce the rate of introduction to the vessel such that the rate of draining exceeds the rate of introduction. One of ordinary skill in the art would, therefore, have a suggestion for varying the rates of draining and introduction of water as claimed for achieving the desired water level.

This rejection and its supporting reasoning are respectfully traversed.

Since Høie does not disclose the subject matter of amended claim 1, the rejection of claim 6 is untenable. Applicant also respectfully submits that Høie would not have rendered obvious the provision of the airtight lid on the upper end of the vessel body to prevent water overflow from the vessel as claimed in claim 6. Water overflow is not the same as turbulence; the function of the lid disclosed and claimed in this application has nothing to do with turbulence. In fact, if Høie's vessel were equipped with the claimed lid and thus sealed at the top without another vent above the water level, persons of ordinary skill in this art would recognize that it would not continue to fill and that an over pressure would result, causing the system to lock hydraulically. Simply put, Høie's system would not work if supplied with the lid of claim 6, so it could not have been obvious from Høie to use the claimed lid. Applicant's invention is unique in having a sealed lid on a vortex vessel and in using the drain at the bottom to pass air and water at the same time because of the formation of an air core with the vortex. The combination of the lid of claim 6 with the drain below the free surface of the water allows for the equalization of pressure and allows additional features not possible with an open top system such as preventing overflow and debris ingress and providing a water feature that is sealed and isolated from the display environment. When these aspects of the invention of claim 6, which are part of the subject matter of claim 6 as a whole, are considered, any case of *prima facie* obviousness of claim 6 on Høie alone evaporates.

Applicant also submits that the Examiner's logic regarding claim 17 (now claim 16) is erroneous. As explained in MPEP 2142, a proper case of *prima facie* obviousness requires the Examiner to have identified in the prior art teachings that either disclose or suggest *all* of the limitations of the rejected claim. What Høie discloses at column 2, lines 50-59, resembles applicant's invention only with the roadmap of amended claim 16 as a guide. That passage, as the Examiner's own language demonstrates, relates to maintaining, not intentionally varying, the height of the liquid in Høie's mixing apparatus. No person of ordinary skill in the art would

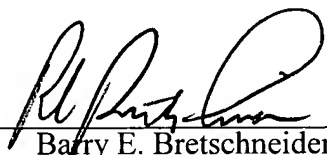
have seen a suggestion in Høie of all of the limitations of amended claim 16 except through prohibited hindsight.

For the foregoing reasons, early action allowing claims 1-16 and 18-20 in this application is solicited.

In the event that the transmittal letter is separated from this document and the Patent and Trademark Office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing 532412000100.

Dated: February 27, 2006

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